

Message Text

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PAGE 01 ISTANB 00722 280806Z
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INFO AMEMBASSY ANKARA
SECSTATE WASHDC 8565

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E. O. 11652: NA
TAGS: BEXP, TU
SUBJ: FCIB QUERY CONCERNING NEW TURKISH REGULATION ON
PERFORMANCE BONDS

REF: USDOC 3164

1. AFTER CONSULTATION WITH EMBASSY, CONGEN PROVIDES FOLLOWING
INTERPRETATION OF PERFORMANCE BOND SITUATION BY ISTANBUL BANKERS.
TURKISH HIGH COURT DECISION IN MID-76 ESTABLISHED PRECEDENT
THAT GUARANTOR HAS CONTINGENT LIABILITY FOR TEN YEARS FOLLOWING
RELEASE FROM OBLIGATION IF VALID CLAIM IS BROUGHT FOR NON-
PERFORMANCE OCCURRING DURING PERIOD OF OBLIGATION.
OBLIGATION IS DEFINED BY GUARANTEE ISSUED BY TURKISH BANK TO
BUYER, SUPPORTED BY STANDBY LETTER OF CREDIT ISSUED BY FOREIGN
BANK IN FAVOR OF CORRESPONDENT TURKISH GUARANTEEING BANK.
UPON PERFORMANCE, E.G., DELIVERY OF GOODS. BUYER NORMALLY
RELEASES TURKISH GUARANTOR BANK FROM OBLIGATION, AND TURKISH
BANK IN TURN RELEASES U.S. BANKK.

2. GOT PUBLIC TNER PROCEDURES HAVE ALWAYS REQUIRED
GUARANTEES TO BE IWTHOUT EXPIRATION DATE. TURKISH BANKS
THEREFORE MAY REQUEST TEN YEAR OR OPEN ENDED STANBY L/C
FROM FOREIGN CORRESPONDENTS. FOREIGN BANKS HAVE FOUND THAT
L/C WITH STANDARD (SIX MONTHS OR ONE YEAR) EXPIRATION DATE PLUS
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CLAUSE STATING TURKISH BANK MAY RENEW L/C FOR ADDITIONAL
SUCCESSIVE PERIODS TO BE ACCEPTABLE TO THEIR CORRESPONDENTS.
U. S. BANKS NORMALLY RETAIN RECOURSE TO SELLER DURING VALIDITY
OF L/C.

3. TURKISH BANKING ASSOCIATION HAS INTERPRETED COURT DECISION
TO ALLOW LOCAL BANKS TO RELEASE FOREIGN CORRESPONDENTS FROM

OBLIGATION UPON RETURN OF GUARANTEE BY BUYER UPON SATISFACTION OF PERFORMANCE CONDITIONS. THUS TURKISH BANK MAY, SUBJECT TO FURTHER COURT INTERPRETATION, RETAIN TEN YEAR CONTINGENT LIABILITY, BUT APPARENTLY WOULD HAVE NO RECOURSE TO FOREIGN COUNTER-GUARANTOR. THUS THE 1976 COURT DECISION WOULD NOT SEEM TO CREATE UNUSUAL LIABILITY FOR US EXPORTERS OR COUNTER- GUARANTEEING BANKS EXCEPT THAT PRUCHASER IS NOT REQUIRED TO RETURN A GUARANTEE UNTIL HE IS FULLY SATISFIED WITH PERFORMANCE. REPORTEDLY THIS HAS NOT BEEN A PROBLEM, BUT REMAINS POTENTIAL CAUSE FOR DELAY IN RETURN OF GUARANTEES AND CANCELLING OF OBLIGATIONS UNDER STANBY L/C'S.

4. WE UNDERSTAND THAT SEVERAL US BANKS INCLUDING BANK OF AMERICA, CITIBANK, IRVING TRUST ARE FAMILIAR WITH THE ABOVE PROCEDURES.
OGDEN

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